

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Art Unit : 3635
Examiner : Chapman, Jeanette E.
Appellant : John L. Andersen
Appln. No. : 10/768,222
Filing Date : January 30, 2004
Confirmation No. : 6217
For : IN-WALL VENTILATION HOUSING

Dear Sir:

REPLY BRIEF

This replies to the Examiner's answer in the above-noted Appeal. As stated in the initial brief, common sense does not suggest the obviousness of the currently claimed invention. *See K.S.R. International Co. v. Teleflex, Inc. et al.*, 127 S. Ct. 1727 (2007). In essence, the Examiner now argues that standoffs are universal, generic elements in the mechanical arts anywhere reinforcements or strength is needed. However, the Examiner has provided no evidence of this, and the references cited by the Examiner do not disclose such a structure. Furthermore, while the Examiner states that the Simon reference teaches standoff-type tabs 50, these "protuberances 50" define recesses on the inside of the medicine cabinet of Simon and serve as spacer means for spacing the edge of the medicine cabinet with the adjacent stud. Unlike the protuberances of Simon, the standoffs of the instant application are used to protrude into a stud and assist in attaching the in-wall ventilation housing to a stud. Thus, even when combining the housing of Harpenau with the protuberances of Simon, all of the elements are not taught by the cited references. One of ordinary skill in the art would not use the protuberances of Simon to form the standoffs used with the in-wall ventilation housing of the instant application.

Moreover, the Examiner is using hindsight construction in combining the references, especially with the rejection of claim 8. In her rejection, the Examiner uses the Musto reference in view of Simon and further in view of Harpenau. The fact that the Examiner had to use three references to even attempt to arrive at the structure of the in-wall ventilation housing of the

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instant application is a strong indicator that she is using hindsight reconstruction and that the invention of the claims, especially claim 8, would not have been obvious to one of ordinary skill in the art at the time of invention. In addition, even these three references in combination do not disclose the entire structure of claim 8 or any of the claims because there are no standoffs disclosed, as that term is used in the instant application. Moreover, the Examiner states that one of ordinary skill in the art would have appreciated that not all wall openings and housing include 90° or straight walls. However, the Examiner cites no evidence for this and cites no teaching to show that one of ordinary skill in the art "would be motivated" to make the structure of claim 8.

For these reasons, and the reasons given in the Applicant's initial brief, the rejection of the Examiner of all of the claims in the instant application should be reversed.

Respectfully submitted,

Dated: March 24, 2008

/Eugene J. Rath III/
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